

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In re: Student

BSEA #: 2002735

RULING ON MOTION FOR SUMMARY JUDGMENT

On September 6, 2019 Parents filed for a hearing with the Bureau of Special Education Appeals (BSEA) against the Brookline Public Schools (BPS) seeking, among other things, retroactive reimbursement for their unilateral placement of Student at Beaver Country Day School (BCDS) for the 2017-2018 and 2018-2019 school years (Student's 7th and 8th grade school years, respectively). Parents also seek current and prospective funding from BPS for Student's BCDS placement for the current school year (2019-2020) and for the 2020-2021, 2021-2022, and 2022-2023 school years, representing the balance of his high school career. Finally, parents seek reimbursement for costs of an independent neuropsychological evaluation. An extensive pre-hearing conference was held on October 7, 2019 and four hearing dates are scheduled for late February 2020.

On January 16, 2020 BPS filed a Motion for Summary Judgment (MSJ) arguing:

- 1) Parents' claims prior to September 6, 2017 are time-barred and must be denied as a matter of law.
- 2) Parents' claims for prospective placement beyond the 2019-2020 school year are unripe and must be denied as a matter of law.
- 3) Parents' requested relief for tuition reimbursement, transportation, and related costs for BCDS is improper under the Individuals with Disabilities Education Act (IDEA) and must be denied as a matter of law, as BCDS does not provide special education or related services.
- 4) Parents' requested relief for reimbursement for independent neuropsychological testing/observation and testing costs must be denied as a matter of law.

On January 22, 2020 Parents filed their response and opposition to BPS' MSJ.

Pursuant to 801 CMR 1.01(7)(h) a party may move summary judgment if there are no genuine issues of fact relating to all or part of a claim or defense and the moving party is entitled to prevail as a matter of law. (See also Federal Rule of Civil Procedure – Rule 56(a).)

RULING

- 1) BPS' MSJ asserting that any claims arising prior to September 6, 2017 must be denied is hereby **GRANTED**. Pursuant to 20 U.S.C. §1415(f)(3)(c) and 34 CFR §300.511(e) there is a two year statute of limitations under the IDEA. Parents filed their hearing request with the BSEA on September 6, 2019. Therefore, they are entitled to reach back to September 6, 2017

regarding any claims against BPS. All claims prior to September 6, 2017 are time-barred and can no longer be raised.¹

- 2) BPS' MSJ with respect to parental claims for prospective relief/placement at BCDS beyond the 2019-2020 school year is **GRANTED** as such claims are not ripe. Pursuant to both state and federal special education law, the BSEA has jurisdiction over "any matter relating to the identification, evaluation or educational placement of the child or the provision of a free and appropriate public education." See 20 U.S.C. §1415(b)(6)(A); 34 CFR §300.507(a); M.G.L. c71B, §2A(a)(i); 603 CMR §28.03. These statutes and regulations make clear that "any matter" refers to a current, live dispute between the parties. The IDEA states that "a due process complaint must allege a violation... See 20 U.S.C. §1415(b)(6)(B); 34 CFR §507(a)(2). Massachusetts law, cited directly above, provides for hearings to resolve disputes. Nothing under either federal or state law authorizes the BSEA to take jurisdiction of potential future matters over which no dispute currently exists.
- 3) BPS' MSJ regarding tuition payment for BCDS is **DENIED**. There are genuine issues of fact regarding the school years at issue in this appeal – 2017-2018; 2018-2019 and 2019-2020. During such time periods BPS determined that Student was not a student in need of special education and Student was not placed on an individual education program (IEP). (BPS did offer Student a 504 Accommodation Plan during at least some portion of the above time period.) Parents contend that Student required an IEP and special education services during said time periods and unilaterally placed Student at BCDS. There are, therefore, genuine factual issues in dispute and under such circumstances Summary Judgment is not appropriate.

Parents, however, bear an onerous burden of proof in this regard. They must demonstrate Student's eligibility for an IEP, in the context of his high academic functioning in BPS. They must also bear an additional significant burden of proving that, in order to address Student's special education needs, he required placement at BCD, a private, college preparatory school which is not a Massachusetts approved special education school and neither provides special education or related services. In fact, BCDS provides Student the same services it provides to all of its other students. Parents' contention that BCDS provides the "equivalent" of special education is, at best, extremely tenuous.

- 4) BPS' MSJ regarding reimbursement for an independent neuropsychological evaluation is **GRANTED**. 603 CMR 28.04(5) governs the process of how and when Parents may obtain and receive funding from a school district for an independent evaluation. Reimbursement for an independent evaluation is not a remedy for an alleged FAPE denial.

By the Hearing Officer,

Raymond Oliver

Dated: February 3, 2020

¹ I acknowledge that Parents, in their Opposition to BPS' MSJ, state that they are not seeking any relief prior to September 6, 2017. However, this Ruling clarifies any ambiguity in Parents' original hearing request.